BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

Summary of Argument.

As the points of our argument are substantially the same as the reasons relied on for the allowance of the writs (Petition, pp. 10-13), we shall, in the interest of brevity, not repeat them at this point.

POINT I.

The Court below, in holding that the written charters did not supersede and cancel the prior oral charters, has rendered a decision in conflict with decisions of the Circuit Courts of Appeals in the Eighth and Fifth Circuits, and with one of its own previous decisions.

In *Luster et al.* v. *Gilruth,* 60 Fed. (2d) 751 (C. C. A. 8), the plaintiffs sued on a verbal contract made with one Hermann, under which Hermann agreed, in consideration of assurances given by the plaintiffs in connection with the reorganization of the Gillette Rubber Company, to give each of the plaintiffs one-fourth of the common stock of the new company. Hermann delivered only part of the stock to the plaintiffs, and damages were claimed for his failure to deliver the balance.

The defendants contended that the oral contracts had been cancelled by subsequent inconsistent written contracts. It appeared that about a year after the plaintiffs became entitled to the delivery of the remainder of the stock under their agreement with

Hermann, they entered into a contract of option with Hermann to buy this same stock from him.

The Court said (p. 755):

> "The oral contracts for free delivery of a part of this stock covered by the option contract cannot be enforced at the same time that the option contract stands. They are entirely inconsistent and contradictory. A contract right to have delivered certain stock and another contract for an option to purchase from the same owner the same stock are as different as black and white, and since the two cannot stand together, the one which is later in point of time must prevail as representing the latest legal obligations concerning the subject-matter assumed by parties capable of contracting."

The Court also made some pertinent remarks (p. 755) about a contract for the purchase of the company's common stock following a cancellation of the option contract.

In *Housekeeper Pub. Co.* v. *Swift, et al.*, 97 Fed. 290 (C. C. A. 8), the plaintiff sued to recover $25,000, the alleged balance of the purchase price of a printing and publishing plant and of the good will of the business of publishing a newspaper. The plaintiff contended that the contract price was $50,000 while the defendant claimed that it was $25,000. The Court sustained a demurrer to the complaint and dismissed the suit.

The Circuit Court of Appeals, affirming the judgment, assumed, although it did not find, that two contracts for the sale of the property had been made.

It held that the contracts were inconsistent and that both of them could not stand. There was no allegation of fraud or mutual mistake. The Court said (p. 294):

> "There was but one sale of this property, and this sale could not have been for $50,000. and for $25,000. at the same time. A subsequent contract completely covering the same subject-matter, and made by the same parties, as an earlier agreement, but containing terms inconsistent with the former contract, so that the two cannot stand together, rescinds, supersedes, and is substituted for the earlier contract, and becomes the only agreement of the parties on the subject."

The same rule was laid down in *Consumer's Cotton Oil Co.* v. *Ashburn,* 81 Fed. 331, 334 (C. C. A. 5).

In *Lichtenberg* v. *Harvey,* 57 Fed. (2d) 82 (C. C. A. 2), it was claimed that an oral contract to assign property as collateral security for the payment of advances covered the assets of the assignor's business as well as real estate. A written contract subsequently executed covered only real estate. The Court, affirming the judgment on the opinion of the District Court, held that if the oral contract included the business assets, it was superseded by the later written contract.

The rule is well stated in *McCabe Constr. Co.* v. *Utah Const. Co.,* 199 Fed. 976 (D. C. Ore.), where the plaintiff sued to recover damages for the alleged breach of an oral contract with the defendant, and the defendant moved for judgment on the pleadings. The defendant had a contract for railway construction, and sublet part of the work by verbal contract to the plaintiff. The plaintiff commenced performance and shortly afterward the defendant notified the

plaintiff that it would not perform the contract, but would require the plaintiff to do the work at lower prices and under other conditions which were less favorable to the plaintiff. When the plaintiff refused to consent to the proposed changes the defendant gave the plaintiff the alternative of accepting those changes or stopping work. The defendant then presented to the plaintiff a written agreement containing the new terms, and demanded that the plaintiff sign it in place of the original contract. The plaintiff did so under protest and performed the work under the second contract and received payment therefor.

The Court said (p. 978):

> "The second contract covers, and was intended by the parties to cover, the same subject-matter as the first and therefore superseded it. It is a legal impossibility for two inconsistent contracts covering the same subject-matter between the same parties, each intending to fix the entire compensation for the same services, to exist at the same time. When, therefore, the defendant required as a condition to plaintiff proceeding with the work, that it enter into a new contract, fixing other and different prices for the entire work, and it acceded thereto, and signed the contract, such contract necessarily superseded, abrogated, and took the place of the first, as a matter of law, and became the measure of the obligation of both parties."

In the cases at bar, the District Court sustained the petitioner's exceptions on the authority of the above decisions. The Circuit Court of Appeals, however, did not refer to them in its opinion.

The view of the Circuit Court was that the oral

and written charters were not inconsistent with each other because, so it said, the written charters contained promises by the petitioner to carry out the oral agreements to the extent of one voyage only, thus leaving the alleged oral obligation to make the second voyage unaffected. But the same argument could be made as to any of the cases just cited. For example, it could be argued, as to *Housekeeper Pub. Co.* v. *Swift, supra,* that the written contract to purchase the printing plant for $25,000 cash only applied to that part of the prior oral contract providing for a cash payment of $25,000, leaving outstanding the remainder of the oral contract requiring an additional payment of $25,000 in notes.

The oral charters, it should be noted, were for a *period* of two to five months. The upper limit was ample for a round voyage to the Far East but was far too much for a round trip to Africa. It was about right for two round trips to Africa, where the petitioner was planning to send the ships all the time. The oral charters thus permitted the respondent to make two voyages to Africa, whereas the written charters allowed but one voyage. In other words, the oral charters in effect gave the respondent an option for a second African voyage and the written charters had the effect of cutting off the option. A contract for two voyages could no more stand with a contract for one voyage only than the contracts to purchase the same property for $25,000 and $50,000 could stand together, as held in the *Housekeeper Publishing Co.* case, *supra.*

The Massachusetts cases cited by the Court (R. 33) as treating an oral contract as existing in spite of a subsequent written contract on the same subject, are, it seems to us, clearly distinguishable.

In *MacLaren* v. *Windram Mfg. Co.*, 287 Mass. 221, the Court held that there was no patent inconsistency between the oral and written agreements, and that it was just as inferable that the written agreement was intended to extend the oral agreement as to supersede it.

In *Edgar* v. *Joseph Breck & Sons Corporation*, 172 Mass. 581, the plaintiff sued for breach of a warranty that lily bulbs sold by the defendant to the plaintiff were of a certain kind. The plaintiff asked whether the lilies were of the type desired and the manager replied that they were, and then the plaintiff gave him the order verbally. When the bulbs were delivered, they were accompanied by a bill which stated that the defendant did not warrant seeds. Most of the bulbs proved to be of an inferior variety. The Court held that the printed statement had no effect unless it led to the inference that the verbal contract had been rescinded and a new one substituted; that the bill did not establish a rescission of the verbal agreement as a matter of law and that the question was one for the jury.

In *Corey* v. *Woodin*, 195 Mass. 464, the Court held that the facts were such that the second agreement did not necessarily show, as a matter of law, that the former oral agreement under which rights had already vested was rescinded or merged in the new bargain.

The facts in the above cases were totally unlike those involved here, where the parties knowingly and deliberately placed their signatures on complete written contracts which cut down the number of voyages which could be made to Africa from two to one.

The Court below found the written charters ineffective to supersede the oral ones *in toto* because of lack of consideration. Again the decision is in conflict with those previously cited (pp. 15-18). In those cases the necessity of a new consideration to support the second agreement must have been deemed unnecessary for surely all the Judges who participated could not have overlooked the point.

With due deference, it appears to us that the lower Court was inconsistent on the subject of consideration. It upheld the written charters as to the first voyage covered by the oral agreements, but invalidated them for lack of consideration so far as they cut off a second voyage. If they were invalid for lack of consideration they ought to be altogether invalid. We are unable to see how they could effect a partial rescission, as the Court said (R. 33). They were either wholly effective or wholly ineffective. The cases on which the petitioner relies show that they accomplished a complete rescission of the oral agreements.

Furthermore, if consideration is a material factor in cases of this kind the parol evidence rule might just as well be abolished to that extent. Certainly if the rule, as generally stated (*infra,* p. 30) is that all prior oral negotiations, agreements, etc. are merged in the final written agreement, the question as to whether the written agreement is supported by a new consideration cannot be a relevant one if the rule is to have any standing.

The conflict in the Circuits on the questions covered in this point requires, we respectfully submit, that they be passed upon by this Court and finally settled.

POINT II.

The Court below erred in failing to apply Section 33(2) of the Personal Property Law of New York and to hold that the written charters, because of that Statute, needed no consideration and hence were valid and effective instruments to supersede and cancel the prior oral contracts.

The Court said that the written charters lacked consideration and held them invalid for this reason in spite of Section 33(2) of the New York Personal Property Law, which seems designed to cover precisely this situation. The statute (Petition, p. 2) provides that an agreement made to change, modify or discharge, in whole or in part, any pre-existing contract shall not be invalid because of absence of consideration, provided that the later agreement is in writing and signed by the party against whom it is sought to be enforced.

The statute seems worded clearly enough. But the Court held that the written charters constituted agreements to carry out only a part of the petitioner's obligations under the oral charters, and so did not amount to a complete rescission of the previous charters; and that unless there was a rescission or an agreement to rescind implicit in the signed charters (supposedly meaning an implied agreement for a complete rescission) the statute would not invalidate the oral charters.

We respectfully submit that the Court misconstrued the statute. It seems to have passed by two features of the statute, first, that it includes any agreement made to *modify* a prior agreement, and,

second, that it covers an agreement to change or discharge a prior agreement, *in whole or in part.*

Although the petitioner claims that the written contracts rescinded the oral ones completely, it is not necessary for us to go that far in order to sustain the written contracts under the New York statute. If they were not complete rescissions of the oral charters, they certainly were rescissions to the extent of eliminating a second round voyage. Furthermore, since they restricted the respondent to a single voyage, their effect, as pointed out by Judge Learned Hand (R. 35, 36), was to eliminate the option of a second voyage given to the respondent under the oral charters. This, in Judge Hand's view, was a modification of a pre-existing agreement, and, as such, came directly within the New York statute.

The decisions of the New York Courts, cited in subdivision 5 of the title "Reasons For Granting the Writs" (Petition, p. 11), seem clearly opposed to the lower Court's construction of Section 33(2). They draw no distinction between total and partial rescissions, as the lower Court did, and also apply the statute to a modification of a pre-existing contract, as it was intended to be applied.

There is no reason, as Judge Learned Hand said, why Section 33(2) of the New York Personal Property Law should not apply to charter parties. This Court, in *Red Cross Line* v. *Atlantic Fruit Company,* 264 U. S. 109, held that the New York Arbitration Statute, when applied to charters, did not impair or tend to impair the essential uniformity of the maritime law in the United States. See also *The Lottawanna,* 21 Wall. 558, 581.

Because of the lower Court's apparent miscon-

struction of Section 33(2) of the New York Personal Property Law, and its failure to apply that statute here, and to hold the written charters valid thereunder, we submit that an important question concerning the applicability and the scope of the statute is involved herein, and that the question should be reviewed and determined by this Court.

POINT III.

The Court below, in holding that the respondent's letter of protest was effective to preserve its rights under the oral charters and to negative the complete integration of the agreement of the parties, has rendered a decision in direct conflict with decisions of this Court.

The District Court ruled that the legal consequences of the respondent's execution of the written charters were not affected by its letter of protest (Conclusion of Law No. VII, R. 21). The Circuit Court of Appeals, in taking the opposite view, has rendered a decision in conflict with the applicable decisions of this Court.

In *United States* v. *Lamont,* 15 Sup. Ct. Rep. 97 (155 U. S. 303), the War Department advertised for proposals for doing dredging work at New York. The relator submitted the lowest bid and the engineer in charge accepted the relator's proposal. The Secretary of War afterward notified the engineer not to close a contract with the relator.

The work was readvertised and proposals were called for which differed from those contemplated by the first advertisement. The relator again put in a

bid and again was the lowest bidder and obtained the contract under the new specifications. While the bid was pending, the relator sued for a writ of mandamus to compel the Secretary of War to sign a contract with the relator under the terms first advertised.

This Court affirmed the judgment of the lower Court refusing a writ and said (p. 99):

> "Nor does the fact that in making his second contract the relator protested that he had rights under the first better his position. If he had any such rights, and desired to maintain them, he should have abstained from putting himself in a position where he voluntarily took advantage of the second opportunity to secure the work. A party cannot avoid the legal consequences of his acts by protesting, at the time he does them, that he does not intend to subject himself to such consequences. In the case of *Bank of U. S.* v. *Bank of Washington,* 6 Pet. 8, certain payments had been made to the first bank upon a decision by the court below, with notice that the payer intended to take the case to the Supreme Court of the United States, and would expect the payee, the Bank of the United States, to refund the money if that court should reverse the decision of the court below, and hold that it was not due. The court said: 'No notice whatever could change the rights of the parties so as to make the Bank of the United States responsible to refund the money.' "

The Court then quoted an excerpt stated to be from its opinion in *Gilbert* v. *U. S.,* 8 Wall. 358. There seems to have been a mistake. There is no such language in the *Gilbert* opinion, but there is in the *Parish* opinion following.

In *Parish et al.* v. *United States,* 8 Wall. 489, the claimants, pursuant to a notice of D. L. Magruder, the surgeon and medical purveyor of the Military Department of the West, submitted proposals for furnishing ice to all the United States General Hospitals in western and southern areas for the year 1864. The proposals were accepted and a contract was executed by the claimants and Magruder, subject to the approval of the Surgeon-General, by which the claimants were to furnish ice for various places, including New Orleans. The contract was approved and mailed by the Surgeon-General to Magruder, but before it reached Magruder, the approval was reconsidered and the contract recalled, and the draft of another contract was prepared in its place. When the second draft reached Magruder he was directed by the Secretary of War to eliminate New Orleans as one of the places to be supplied with ice, and to have the second contract executed in lieu of the original one. The claimants executed the second contract, protesting against the alteration and stating that they would submit the facts to the officials at Washington and seek redress from them. Notwithstanding their protest, the claimants carried out their obligations under the second contract.

Mr. Justice Field said (p. 490):

> "Upon the facts found by the Court of Claims, it is difficult to perceive upon what ground the contractors can urge any claim for damages against the government. The contract with New Orleans erased, superseded all other proposed contracts. No other had any validity. The action of Magruder, until the approval of the Secretary

> of War, was merely initiatory to a contract. He could not bind the United States in any way.
>
> If the claimants had any objections to the provisions of the contract they signed, they should have refused to make it. Having made it, and executed it, their mouths are closed against any denial that it superseded all previous arrangements."

In *McCabe Constr. Co.* v. *Utah Const. Co.* (*supra,* pp. 17, 18), the plaintiff made a specific protest when it executed the second contract, but the Court held that the protest did not better the plaintiff's position.

In *Consumers' Cotton Oil Co.* v. *Ashburn,* 81 Fed. 331 (C. C. A. 5), the Court, considering a similar situation said (p. 335):

> "If he (the seller) desired to insist upon his rights under the first contract, he should have stood by it, insisting on its performance, and not have made a subsequent arrangement."

The respondent wanted the petitioner's ships, but on its own terms. But it could not get them except on the basis of one round voyage. Therefore, in order to get them, it signed the charters with the one voyage limitation and at the same time tried to convert them into mere pieces of paper by making a protest. Under the decisions of this Court, above cited, this protest was absolutely futile. It was a nullity.

Because of the conflict of the decision below with the decisions of this Court, we respectfully submit that the writs prayed for should be granted.

POINT IV.

The decision of the Court below, in holding that the written charters should be treated as a proper attempt by the respondent to mitigate damages, is in conflict with a decision of the Circuit Court of Appeals for the Eighth Circuit.

The respondent asked the Court below to consider the written charters as an attempt by it to minimize its damages, citing *Lawrence* v. *Porter,* 63 Fed. 62 (C. C. A. 6). The Court accepted this contention. But this ruling, we submit, assumes the very point to be decided, which is whether any agreements existed, in connection with which the respondent had any damages to minimize. Obviously, if the oral charters were merged in or superseded by the written ones there would be no breach and hence no damages.

The same argument was advanced in *Luster et al.* v. *Gilruth,* 60 Fed. (2d) 751 (C. C. A. 8), and rejected. The Court said (p. 756):

> "Appellees argue that the sales contract cannot operate as a cancellation of the oral agreements because, by this time, Hermann had repudiated his contracts with plaintiffs and announced that he was going to sell his stock to whomsoever would buy it, and that this contract was a mere device of plaintiffs to minimize their damages through this repudiation by Hermann of the oral agreements. This suggestion is ingenious, but not convincing. There is no evidence of duress by Hermann in the making of this contract, and the courts were open to plaintiffs to protect whatever rights they then had. If they preferred to take care of the situation which confronted them by this voluntary contract, they must assume the burdens as well as having the benefits thereof."

The plaintiff, in *McCabe Constr. Co.* v. *Utah Const. Co.*, 199 Fed. 976 (*supra*, pp. 17, 18), also made this argument. It alleged that it would have been put to great expense in taking its supplies, outfit and men back to Portland, Oregon, if it had discontinued work on the original contract after the defendant's breach, and therefore executed the written contract under protest and only for the purpose of keeping its men employed and to mitigate its damages. The Court, nevertheless, held that the verbal contract was superseded by the written one.

The case of *Endriss* v. *The Belle Isle Ice Co.*, 49 Mich. 279, cited by the lower Court (R. 33), is apparently in conflict with the *Luster* and *McCabe* cases.

Because of the conflict on this point between the lower Court's decision and the decisions in *Luster et al.* v. *Gilruth*, and *McCabe Constr. Co.* v. *Utah Const. Co.*, *supra*, we submit that the question should be reviewed by this Court and finally settled.

POINT V.

The decision of the Court below is opposed to the parol evidence rule, under which all prior oral agreements, in the absence of fraud or mistake, are merged in the written agreement covering the particular subject matter.

The charters drawn up in the unsigned form (Schedule A, annexed to the libels), and the charters which the parties executed, were exactly the same except for the limitation of the charter period in the latter to

one round voyage regardless of the trade in which the vessels were placed (Finding No. 11, R. 18).

Corpus Juris Secundum, Vol. 17, Section 381, pages 872-874, states as follows:

> "A rule of the common law, enacted into statute in some jurisdictions, is that in the absence of fraud a written contract merges all prior and contemporaneous negotiations on the subject, together with all prior oral contracts, and together with and including antecedent correspondence and prior written memorandums, but this is in effect a statement, in different form, of the rule excluding evidence of prior or contemporaneous oral agreements to contradict or to modify a written contract * * *, based on the presumption that, in the absence of accident, fraud, or mistake, the whole engagement of the parties is expressed in the writing."

The libels here allege no fraud or mistake in the execution of the written charters.

In *The Delaware,* 14 Wall. 579, suit was brought for the loss of a shipment of pig-iron, which had been stowed on the deck of the bark *Delaware* and jettisoned in a storm. The bill of lading contained no provision for deck stowage, but the carrier pleaded a prior verbal agreement with the shipper for on-deck stowage. Proof of this verbal agreement was held inadmissible.

This Court said (pp. 603, 604):

> "Verbal agreements, however, between the parties to a written contract, made before or at the time of the execution of the contract, are in gen-

eral inadmissible to contradict or vary its terms or to affect its construction, as all such verbal agreements are considered as merged in the written contract.

Apply that rule to the case before the court and it is clear that the ruling of the court below was correct, as all the evidence offered consisted of conversations between the shippers and the master before or at the time the bill of lading was executed."

See also:

Gronvold et al. v. *Suryan,* 12 Fed. Supp. 429, 430;

Matthias v. *Beeche et al.,* 111 Fed. 940, 941 (E. D. N. Y.);

The Addison E. Bullard, 258 Fed. 180 (C. C. A. 5);

Borin Corporation v. *Commissioner of Internal Revenue,* 117 Fed. (2d) 917 (C. C. A. 6);

Griffin Mfg. Co. v. *Boom Boiler & Welding Co.,* 90 Fed. (2d) 209, 212 (C. C. A. 6);

Ries v. *Dodson,* 46 Fed. (2d) 68, 70 (C. C. A. 3);

Metropolitan Casualty Ins. Co. of New York v. *Banks,* 76 Fed. (2d) 68 (C. C. A. 3);

The Melrose, 1926 A. M. C. 1585 (S. D. N. Y.);

Ainesworth Coal & Iron Co. v. *Grangesberg Oxelosund,* 287 Fed. 291 (C. C. A. 4);

Robbs Express Co. v. *Ferkel,* 200 Ill. App. 471;

Bryant v. *Bryant, et al.,* 295 Pa. 146;

J. B. Colt Company v. *Gregor,* 328 Mo. 1216;

Whittier v. *Goldberg,* 274 Mass. 325.

If the petitioner had sued the respondent for a breach of the written charters, which are complete to the last detail, evidence of the prior alleged oral charters certainly would not be admissible to contradict or modify the written charters. If this is so, it must follow that the respondent cannot evade the rule by ignoring its written agreements and suing on the prior oral ones. And yet the lower Court's decision seems to sanction that very thing.

In Corpus Juris Secundum, Vol. 17, it is stated in Section 381 (p. 874), as follows:

> "* * * a party cannot abandon his written contract and attempt to enforce a previous oral agreement at law, on the ground that the written agreement does not correctly represent the oral one; * * *."

In *Klies* v. *Niagara Fire Insurance Co.*, 117 Mich. 469, the plaintiff sued on an alleged oral contract to insure her house and household goods against loss by fire, by which they were destroyed. The plaintiff's husband, as her agent, applied for the insurance to the defendant's agent, agreed upon the rate, and paid the agent the premium.

The insurance policy, as agreed, was duly drawn up and delivered to the plaintiff's husband. It contained a clause providing that it should be void if the assured then had any other insurance on the property. The plaintiff did have other insurance but claimed that its existence had been disclosed to the agent before the contract was made.

The Court found that the plaintiff was really seeking a recovery upon the oral contract, and decided

against her, one ground of its decision being that she could not disregard the written contract. It said (pp. 473, 474):

> "The plaintiff cannot sustain this declaration by the record—* * *, because the evidence conclusively shows that the parties reduced the result of their various interviews and negotiations to writing, and that the policy accepted and kept by the plaintiff, and the application held by the defendant, are the evidence of the contract. * * *
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> If, as counsel contends, this policy was not in accord with the oral agreement, she might have had it reformed by applying to a court of equity on the ground of mistake, and rescinded, if not reformed, upon the ground of fraud, if there were fraud. But she has taken a different course. With her written contract outstanding, she seeks to ignore it, and recover upon a *contract for a contract,* and depends for success upon her ability to convince a jury that the written contract that she holds is not such a contract as the defendant agreed to make."

The Court, referring to numerous cases, said (pp. 475, 476):

> "The inference to be drawn from these cases is that, where there is fraud or mistake, equity may afford relief, but will do so cautiously, and will require clear proof of the fraud or mistake. They negative the idea that one may reduce his oral agreement to writing, formally execute or accept and keep it, and at a later time ignore the solemn writing, and bring an action upon a preliminary agreement. This would be an innovation that would render written contracts no better

than oral ones, and practically make them subject to variation and contradiction by parol, and, by indirection, evade one of the best and most uniformly settled rules of law, and render obsolete a branch of equity jurisdiction."

See also:

Luster et al. v. *Gilruth,* 60 Fed. (2d) 751 (C. C. A. 8);
Shea v. *Cutler,* 147 Iowa 366, 126 N. W. 366.

It was argued here—and successfully—that the written charters were not a correct memorial of the agreement between the parties; that there was no integration of the agreement because of the respondent's letter of protest. What the argument seems to amount to is this: That in spite of the fact that complete agreements were signed, without fraud or mistake, the Court can go outside the limits of those agreements, by virtue of the letter of protest, and decide whether they constitute an integration of a prior oral agreement.

The Court's decision holding this permissible, is, we believe, erroneous and in conflict with the rule stated by this Court in *Seitz* v. *Brewers' Refrigerating Mach. Co.,* 12 Sup. Ct. Rep. 46 (141 U. S. 510). This Court there said (pp. 47, 48):

"Undoubtedly, the existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proven by parol, if under the circumstances of the particular case, it may properly be inferred that the parties did not intend the written paper to be a complete and final

statement of the whole of the transaction between them. But such an agreement must not only be collateral, but must relate to a subject distinct from that to which the written contract applies; that is, it must not be so closely connected with the principal transaction as to form part and parcel of it. And when the writing itself upon its face is couched in such terms as import a complete legal obligation, without any uncertainty as to the object or extent of the engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing."

We submit that the written charters are conclusively presumed to be a complete integration of the agreement of the parties and that the lower Court erred in holding otherwise.

For the reason that the lower Court's decision conflicts with the well established rule against the admission of prior oral agreements to contradict or modify an agreement complete on its face we respectfully submit that the decision should be reviewed and the question settled by this Court.

CONCLUSION.

It is respectfully submitted that this petition for writs of certiorari to review the judgments of the Circuit Court of Appeals for the Second Circuit in these cases should be granted.

Dated, February 2, 1942.

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